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Supreme Court, U.S.

**FILED**

**MAR 3 1972**

**APPENDIX**

**E. ROBERT SEEVER, CLERK**

**In the Supreme Court of the United States**

**OCTOBER TERM, 1971**

**No. 71-573**

**MELVIN LAIRD, SECRETARY OF DEFENSE,  
ROBERT SEAMANS, JR., SECRETARY OF AIR FORCE,  
and UNITED STATES OF AMERICA, PETITIONERS**

**v.**

**JIM NICK NELMS, LETTIE BAKER NELMS  
and LONNIE RAY NELMS**

**ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR  
THE FOURTH CIRCUIT**

**FILED OCTOBER 22, 1971  
PETITION FOR A WRIT OF CERTIORARI GRANTED  
JANUARY 17, 1972**

# In the Supreme Court of the United States

OCTOBER TERM, 1971

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No. 71-573

MELVIN LAIRD, SECRETARY OF DEFENSE,  
ROBERT SEAMANS, JR., SECRETARY OF AIR FORCE,  
and UNITED STATES OF AMERICA, PETITIONERS

v.

JIM NICK NELMS, LETTIE BAKER NELMS  
and LONNIE RAY NELMS

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR  
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## RELEVANT DOCKET ENTRIES

No. 1127-Civil in the United States District Court for the  
Eastern District of North Carolina

<i>Date</i>	<i>Proceedings</i>
1969	
June 16	COMPLAINT—Pltf's ask \$16,000.00 for damage to home caused by sonic booms (Seymore Johnson Air Base) and cost.
August 28	Motion to Dismiss by defts.
September 4	Motion for Denial of Motion to Dismiss filed by plffs. Motion to Amend Complaint. Defendant's Memorandum in Support of Motion to Dismiss and for Summary Judgment.
September 6	Order allowing plffs.' Motion to Amend Complaint and to add U.S.A. as party deft.; that portion of defts.' Motion to Dismiss as set forth in pars. 1 & 2 is denied.
September 10	Amended Complaint adding United States of America as party deft. Motion for an Order ordering defts. to furnish plffs. with full report that was sent by Engineer at Seymour Johnson Air Force Base to Washington on inspection.
October 17	Order that defts. furnish full report of engineer, identified as Exhibit F, Page 2, Item 21, entitled "Findings and Opinions" within 10 days after service of said order. (LARKINS, J.)
October 23	Exhibit F. Response to order (Report of Engineer). Defendant's Motion to Dismiss.
October 24	Plaintiff's Motion to deny Motion to Dismiss.

*Date**Proceedings*

- Defendant's Reply to Motion to Deny Motion to Dismiss.
- October 28 Motion to Deny Defts' Motion to Dismiss.
- October 30 Memorandum and Support of the plff's Motion to Deny Deft's Motion to Dismiss Filed October 28, 1969 w/attachments.
- November 3 Supplemental Argument in Motion to Deny Defendants Motion Dismiss.
- Motion in Discovery—moves that defendant produce AFM, 112-1 for plaintiff to use for preparing case for trial.
- December 5 Order that the plaintiffs have until January 3, 1970 to file response to the defendant's Motion (Judge Larkins).
- 1970
- March 2 Response to Defendants' Motion to Dismiss and for Summary Judgment.
- March 9 Order allowing defts.' Motion for Summary Judgment, further Atty. Wooten is relieved of making further efforts on plffs.' behalf unless private arrangements be made between Mr. Wooten & Plffs. Copy of Order to be served upon counsel of record. (LARKINS, J.)
- March 16 Notice of Appeal in forma pauperis.
- No. 14,568 in United States Court of Appeals for the Fourth Circuit
- 1971
- May 28 Opinion and Order of Court of Appeals.
- No. 71-573 in the United States Supreme Court
- 1971
- August 18 Order granting extension of time for filing petition for a writ of certiorari until October 25, 1971.

*Date**Proceedings*

October 22

Petition for a writ of certiorari filed.

1972

January 17

Order granting petition for a writ of certiorari.

IN THE UNITED STATES FEDERAL COURT  
EASTERN DISTRICT DIVISION  
WILSON, NORTH CAROLINA

JIM NICK NELMS,  
LETTIE BAKER NELMS,  
and  
LONNIE RAY NELMS

vs.

MELVIN LAIRD,  
*Secretary of Defense*  
and  
ROBERT SEAMANS, JR.,  
*Secretary of Air Force*

COMPLAINT  
[Filed June 16, 1969]

The plaintiffs, complaining of the defendants, says and alleges:

1. That the plaintiff is a resident of Route 1, Nashville, North Carolina, and owns a home situated in a rural community at the above stated address.

2. That the defendants are residents of the State of District of Columbia.

3. That on 14 November, 1968 approximately 2:30 p.m. U.S. Air Force planes sending off sonic booms caused damage to our home at the above stated address.

4. That on several occasions the planes above our home sent sonic booms and that masonry in our home has cracked as a result of the shakes the house received as a result of the sonic booms. The damage is so severe that contractors say that the building can not be fixed and must be rebuilt.

5. That these planes came nearly every day with the worst of the damage being caused on 14 November, 1968.

6. That a team from Seymour Johnson Air Force Base came to my home to check the damage and made false statement in the report; and used illegal tactic.

7. That our home was built to the specification called for in the blue prints and that the home damage is a direct result of the plane damage.

8. That the contractors say that it will cost Fourteen

Thousand to build our home which is 50x56 all masonry unit and Two thousand to build the storage building 24x24 all masonry unit. The plaintiffs are asking recovery of both buildings.

9. That the plaintiffs can furnish eye witness that saw damages made to the home. That saw the planes and know that the home was damaged as a result of the planes.

WHEREFORE, the plaintiffs prays:

That they have and recover of the defendants, jointly and severally, the sum of Sixteen thousand dollars (\$16,000.00) as alleged in paragraph 8 above; and that the costs of this action be taxed against the defendants.

JIM NICK NELMS,  
LETTIE BAKER NELMS  
and LONNIE R. NELMS

By: Jim Nick Nelms

*[Certificate of Service omitted]*

## MOTION TO DISMISS

Comes the defendants, MELVIN LAIRD, *Secretary of Defense*, and ROBERT SEAMANS, JR., *Secretary of Air Force*, through the United States Attorney for the Eastern District of North Carolina, and moves the Court to dismiss this cause upon the following grounds:

1. It appears that the United States of America is a necessary party thereto and is not made a party.
2. Because there is a defect of parties, in that the United States of America is not made a party to this suit.
3. There is an insufficiency of fact in the Complaint to constitute a valid cause of action in equity.
4. The Complaint does not state facts sufficient to constitute a valid cause of action against the defendants.
5. Premises considered, the defendants pray that this case be dismissed.

ROBERT H. COWEN,  
*United States Attorney*

/s/ J. C. Proctor

By:

J. C. PROCTOR  
*Assistant United States Attorney*  
Attorney for Defendants.

[Certificate of Service omitted]

MOTION FOR DENIAL OF MOTION TO DISMISS  
[Filed Sep. 4, 1969]

Comes the plaintiffs, JIM NICK NELMS, LETTIE BAKER NELMS, and LONNIE RAY NELMS and moves the Court to deny the motion to dismiss this cause upon the following grounds:

1. That the defendants do represent the United States of America.
2. That the United States Attorneys do not have the necessary grounds to ask for a dismissal because the defendants do represent the United States of America.
3. That the plaintiffs pray that the Court deny this motion to dismiss this action.

This the 4th day of September, 1969.

JIM NICK NELMS

By: Jim Nick Nelms

JIM NICK NELMS

Route 1

Nashville, North Carolina

MOTION TO AMEND COMPLAINT  
[Filed Sep. 4, 1969]

In order to satisfy the United States Attorneys and this Honorable Court, the plaintiffs move to amend their complaint and add the United States of America to the main defendants in this civil action.

The plaintiffs do have the necessary evidence to show this Honorable Court and eye witnesses in this case to show to the Court that the defendants are liable in this cause.

This 4th day of September, 1969.

JIM NICK NELMS

By: Jim Nick Nelms

**AFFIDAVIT OF THE COMMANDER IN CHIEF,  
STRATEGIC AIR COMMAND**

BRUCE K. HOLLOWAY, duly sworn, states:

I am Bruce K. Holloway, General, United States Air Force. I am the Commander in Chief, Strategic Air Command, with headquarters at Offutt Air Force Base, Nebraska.

The Strategic Air Command is a specified command responsible to the President of the United States and the Secretary of Defense through the Joint Chiefs of Staff for such military missions as may be assigned to it. In operational matters pertaining to the Strategic Air Command, the line of command is from the President to the Secretary of Defense and through the Joint Chiefs of Staff to me. I have command authority over all units, agencies and installations of the Air Force assigned or allocated to the Strategic Air Command, including the 9th Strategic Reconnaissance Wing, Beale Air Force Base, California.

The responsibilities of this command include the organization, training, and equipping of our strategic forces, including supersonic aircraft. The constant training of personnel and testing of equipment are absolutely necessary to assure that this command can perform its mission as the foremost military deterrent of this nation and of the free world.

To meet my command responsibilities I have directed the operational training of aircrews by supersonic flights in the SR-71 aircraft, and the SR-71 flight which was in the vicinity of Nashville, North Carolina, at about 1430 hours on 14 November 1968 was authorized by and conducted pursuant to such direction. These supersonic missions are flown under controls designed to minimize disturbances on the ground, and these controls include prescribed altitudes, routes, and speeds.

In summary, my superiors and I have determined, in the exercise of the authority and discretion vested in us, that these training flights in supersonic aircraft over land areas

of the United States are essential to the security of the nation.

[Bruce K. Holloway]

BRUCE K. HOLLOWAY, *General USAF*  
*Commander in Chief*  
 Strategic Air Command

SUBSCRIBED AND SWORN to before me in the County of Sarpy, State of Nebraska, this 15th day of July, 1969.

[illegible]

*Notary Public*, in and for the  
 State of Nebraska

My Commission expires: 6 March 1973

### AFFIDAVIT

GEORGE M. BULL, duly sworn states:

I am Major George M. Bull, United States Air Force, 347-26-5533FR, 9th Strategic Reconnaissance Wing, Beale Air Force Base, California. I was the pilot of the SR-71 aircraft which was in the Nashville, North Carolina, area at about 1430 hours local, 14 November 1968. Specifically at 1422 local the aircraft was approximately 63NM North of the complaint area in level flight on a heading of 171°. At 1424 local the aircraft was approximately 9NM East of the complaint area on the same heading, altitude above 70,000 feet, speed was 3.1 Mach. At 1425 the aircraft was 25NM South of the complaint area on a heading of 171°, starting a right turn to a heading of 240°. At 1430 local, the aircraft had completed the turn and was on a heading of 240° and was 148NM Southwest of the complaint area; aircraft speed was 3.0 Mach and altitude was above 70,000 feet.

The flight was made in strict accordance with direction given to me regarding route, speed and altitude. I have no authority or discretion to deviate from my flight plan except in case of emergency, and I did not deviate therefrom. The flight also complied with Air Force Regulation 55-34.

[illegible]

GEORGE M. BULL, *Major, USAF*

SUBSCRIBED AND SWORN to before me in the County of Yuba, State of California, this 12 day of August, 1969.

Marcella V. [illegible]

WITH THE UNITED STATES  
AIR FORCE AT  
BEALE AFB, CALIFORNIA

} ss AFFIDAVIT

CHARLES F. MINTER, SR., Colonel, USAF, 257-16-5667FR,  
Commander 9th Strategic Reconnaissance Wing, being duly  
sworn, on his oath, deposes and says:

THAT the below requested information is true and correct  
to the best of his knowledge:

THAT the flight in question on 14 November 1968, at  
approximately 1430 hours, was a high level supersonic  
training flight, combat crew training mission, flown in the  
vicinity of Nashville, North Carolina, altitude in excess  
of 70,000 feet.

THAT the aircraft was on course as prescribed by the  
mission flight plan.

THAT the aircraft mission was a combat crew training  
mission that was essential to maintaining minimum pro-  
ficiencies in flying the SR-71 aircraft.

THAT supersonic flights are absolutely essential to the  
defense of the United States of America pursuant to Stra-  
tegic Air Command Manual 50-8 and Air Force Regulation  
55-34.

THAT the decision to fly the training mission on 14 No-  
vember 1968 was made by the highest level of Government  
and in this instance at the direction of the Commander in  
Chief, Strategic Air Command.

FURTHER DEPONENT SAITH NOT:

/s/ Charles F. Minter, Sr.  
CHARLES F. MINTER, SR.,  
Colonel USAF

SUBSCRIBED AND SWORN to before me this 11th day of August  
1969, at Beale Air Force Base, California.

/s/ Marcella V. [illegible]  
MARCELLA V. [illegible]

My Commission Expires [illegible]

ORDER

[Filed Sep. 9, 1969]

LARKINS, *District Judge* :

The Court having considered paragraph 1 and 2 of the defendant's Motion To Dismiss on the grounds that the United States of America is a necessary party, and the Court having considered the motion of the plaintiffs to amend their Complaint to add the United States of America as an additional defendant, and the Court being of the opinion that the plaintiffs motion should be allowed and the defendants' motion as to paragraphs 1 and 2 should be denied,

It is therefore ORDERED that the plaintiffs' Motion To Amend Complaint to add the United States of America as a party defendant be, and the same is hereby allowed, and that portion of the defendants' Motion To Dismiss as set forth in paragraph 1 and 2 thereof is overruled and denied.

It is FURTHER ORDERED that a copy of the Complaint be served upon the defendant UNITED STATES OF AMERICA by the plaintiffs within SEVEN (7) DAYS from date.

It is FURTHER ORDERED that the Clerk serve a copy of this ORDER upon the plaintiffs and the defendants and their counsel.

/s/ John D. Larkins, Jr.  
JOHN D. LARKINS, JR.  
*United States District Judge*

Trenton, North Carolina  
September 8, 1969

[A True Copy,  
Samuel A. Howard, Clerk

By \_\_\_\_\_ ]  
Deputy Clerk

AMENDED COMPLAINT

[Filed Sep. 10, 1969]

The plaintiffs, complaining of the defendants, says and alleges:

1. That the plaintiffs is a resident of Route 1, Nashville, North Carolina, and owns a home situated in a rural community at the above stated address.

2. That the defendants are residents of the State of District of Columbia.

3. That on 14 November, 1968 approximately 2:30 p.m. U.S. Air Force planes sending off sonic booms caused damage to our home at the above stated address.

4. That on several occasions the planes above our home sent sonic booms and that masonry in our home has cracked as a result of the shakes the house received as a result of the sonic booms. The damage is so severe that contractors say that the building can not be fixed and must be rebuilt.

5. That these planes came nearly every day with the worst of the damage being caused on 14 November, 1968.

6. That a team from Seymour Johnson Air Force Base came to my home to check the damage and made false statement in the report, and used illegal tactic.

7. That our home was built to the specification called for in the blue prints and that the home damage is a direct result of the plane damage.

8. That the contractors say that it will cost Fourteen Thousand to build our home which is 50x56 all masonry unit and Two thousand to build the storage building 24x24 all masonry unit. The plaintiffs are asking recovery of both buildings.

9. That the plaintiffs can furnish eye witness that saw damages made to the home.

WHEREFORE, the plaintiffs prays:

That they have and recover of the defendants, jointly and severally, the sum of Sixteen thousand dollars (\$16,000.00)

as alleged in paragraph 8 above; and that the costs of this action be taxed against the defendants.

JIM NICK NELMS,  
LETTIE BAKER NELMS,  
and LONNIE R. NELMS

By:

*[Certificate of Service omitted]*

ENGINEER'S SONIC BOOM DAMAGE REPORT (Write legibly or type)

Blocks 1 through 9 will be completed by claims officer

1. Claim or complaint No.  
WRA/69-6499/NS

2. Name of claimant(s): JIM NICK NELMS	3. Address: Route 1 Nashville, North Carolina	4. Location of damaged property: Route 1 Nashville, North Carolina
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5. Contact Mr. Jim N. Nelms or claimant at the following phone number: 459-2480	6. Date and hour damage occurred: 14 Nov 1968 2:30 pm	7. Type of damage reported by claimant: Masonry Cracks
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8. Amount Claimed: \$14,000.00	9. Data pertaining to sonic booms, if available: a. Was there a boom? ....., if so, b. Altitude of aircraft: ..... c. Speed of aircraft: ..... d. Type of aircraft: ..... e. Known overpressures: .....
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10. Qualifications of engineer: a. Type of degree: B.S. b. Year received: 1963 c. School: N.C. State University, Raleigh, NC d. Area of engineering specialization: Civil Engineer e. Are you a registered Engineer? No—Hold Engineer in Training Certificate	11. Type of property damage and general description of damage: Damage includes plaster cracks on interior walls and cracks in exterior concrete block walls. Claimant indicated that all cracks in house occurred during the sonic boom. Claimant said that no cracks existed before 1430 hours 14 November 1968.
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12. Date of investigation: 19 December 1968	13. Has damage been repaired? If so, when? No	14. Your estimate of repair costs: \$1,000.00
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15. DETAILS PERTAINING TO SURROUNDING COMMUNITY:

- a. Type of terrain: Hilly
- b. Type of surrounding community: Rural
- c. State whether or not there were present any other potential causes of the claimed damage, such as: Inclement weather, seismic disturbance, heavy truck traffic, railway traffic, explosions, soil conditions, or any other and distance of this factor from claimant's property: Unusually dry season, negligible truck traffic.

16. DATA PERTAINING TO EXTERIOR OF PROPERTY:

- a. Type of construction and size of building: Single story concrete block house over crawl space, approximately 45' x 40'.
- b. Type of roofing and condition: Asphalt shingles on part of roof, built up roof on additions to the house.

- c. Type of foundation and condition: Claimant indicates that foundation is 8" thick by 10" wide perimeter footing. Condition not known.
- d. Condition of sidewalks: No sidewalks.
- e. Condition of sidewalls: Walls of 8" concrete block. Cracks in walls near corners of the building and below windows.

17. DATA PERTAINING TO INTERIOR OF PROPERTY:

- a. Was any settlement noted? Yes. Floor had settled at the north corner of the kitchen where chimney is located.
- b. Type of construction of walls and ceilings: Exterior walls constructed of 8" concrete block with plaster on inside interior walls of 4" concrete block with plaster on each side. Ceiling of acoustical tile.
- c. Condition of plaster, wallboard, tile, etc: Average for house 10 years old.
- d. Location and type of cracks (identify on photos and draw diagrams of damaged area on AFLC Form 670) Plaster and concrete block cracks throughout the house. (See photos and diagrams)

18. Type of glass damage, if any: (identify on photos and draw diagrams on AFLC Form 696) Claimant indicated that no glass damage was noted.

19. General condition of property:  
Average for house 10 years old.

20. When was damaged area last re-decorated-  
Extent of redecoration:  
Interior and exterior painted before 14 Nov 1968 with the exception of one bedroom, which claimant was painting when damaged occurred.

21. FINDINGS AND OPINIONS: (Be specific as to when damage occurred in relation to the time when the sonic boom occurred. Set out your opinion as to cause of damage. If damage partially caused by sonic boom set forth portion of damage you believe attributable to sonic boom. Use a continuation sheet if necessary) Jagged wall cracks were noted above doors and below windows. The living room wall was cracked in the corner and at intervals along the walls. These cracks are of the type noted with contraction and expansion of materials. No expansion joints were noted in the walls. Settlement had occurred around the chimney in the north corner of the kitchen. This settlement was caused by inadequate bearing. This settlement may have been caused by the unusually dry weather in this area during the past few months. It is the opinion of the undersigned that the damage to this house is due to age, changing moisture conditions, contraction and expansion and is not due to sonic booms.

22. Any other comments: The claimant indicated that all cracks in the house occurred on 14 November 1968. Many of the cracks in the bedroom and bathroom areas of the house contained paint. It was very evident that the cracks definitely existed before 14 November 1968.

Date:	Typed Name and Organization of Engineer:	Signature
20 Dec 68	EDWARD W. ELLIS 4 Civil Engineering Sq (TAC) (DEE)	Edward W. Ellis

MOTION TO DISMISS

[Filed Oct. 23, 1969]

Now comes defendants in the above-captioned action and move to dismiss this action pursuant to General Rule 4-F United States District Court Eastern District of North Carolina for that the plaintiffs have not filed a response to the defendant's motion to dismiss filed August 28, 1969, and which was renewed with memorandum of law filed on September 4, 1969.

ROBERT H. COWEN  
*United States Attorney*

By:

J. C. PROCTOR  
*United States Attorney*

[*Certificate of Service omitted*]

MOTION TO DENY DEFENDANTS' MOTION TO DISMISS

[Filed Oct. 24, 1969]

Now comes the plaintiffs in the above captioned action and move to deny the motion to dismiss entered by the defendants and received by the plaintiffs on October 24, 1969, on the grounds that the plaintiffs did file on September 4, 1969, a motion to deny the defendants' motion to dismiss, filed August 28, 1969; the defendants have furnished plaintiffs evidence that the plane or planes were in this area at the time specified in the complaint; that the plaintiffs have amended their complaint and the Court has accepted such amended complaint, and all the United States Attorneys have to do is to deny or admit the complaint.

JIM NICK NELMS,  
LETTIE BAKER NELMS,  
and LONNIE RAY NELMS

By: /s/ Jim Nick Nelms

REPLY TO MOTION TO DENY DEFENDANTS' MOTION TO DISMISS  
[Filed Oct. 24, 1969]

Now comes the defendants in the above captioned action in response to plaintiffs' motion to deny defendants' motion to dismiss filed October 24, 1969, and answer the allegations therein as follows:

That the original motion to dismiss filed August 28, 1969, asserted two basic grounds for dismissal:

- (1) That the United States of America was a necessary party to this action but was not made a party defendant,
- (2) That the complaint failed to state facts sufficient to constitute a valid cause of action against the defendants.

An order was entered and filed September 9, 1969, denying defendants' motion to dismiss on ground (1) mentioned above. Defendants' motion to dismiss based on ground (2) above was not ruled on.

On September 4, 1969, defendants filed a memorandum in support of their previous motion to dismiss and for summary judgment. There has been no reply to this motion and, therefore, defendants renew their motion to dismiss under General Rule 4-F, United States District Court, Eastern District of North Carolina.

ROBERT H. COWEN  
*United States Attorney*

By:

J. C. PROCTOR  
*Assistant United States Attorney*

[Certificate of Service omitted]

MOTION TO DENY DEFENDANTS' MOTION TO DISMISS

[Filed Oct. 28, 1969]

Now comes the plaintiffs in the above captioned action and move to deny the motion to dismiss entered by the defendants and received by the plaintiffs on October 25, 1969, on the grounds that the plaintiffs did file on September 4, 1969, a motion to deny the defendants' motion to dismiss, filed August 28, 1969; the United States Attorney made a motion to dismiss Civil No. 1127, Wilson Division, on the 28th day of August and on the 4th day of September in support of this motion filed a memorandum to dismiss and for summary judgment. This motion was denied, including the support of a dismissalal [sic] and a summary judgment. The plaintiffs filed a motion to deny his motion for dismissalal [sic] on October 24, 1969. The very next day, October 25th, the plaintiffs received another motion for dismissal from the United States Attorney. The plaintiffs are filing this motion today denying the motion that the United States Attorney filed on October 24th of October. The plaintiffs do not want to burden the Court but every time they turn around they receive another motion for dismissal. The plaintiffs have a good case and they attach hereto a memorandum in support of this motion.

The plaintiffs, therefore, pray this Honorable Court to have a hearing as early as possible.

JIM NICK NELMS,  
LETTIE BAKER NELMS  
and LONNIE RAY NELMS

By: /s/ Jim Nick Nelms

*[Certificate of Service omitted]*

MEMORANDUM AND SUPPORT OF THE PLAINTIFF'S MOTION  
TO DENY DEFENDANT'S MOTION TO DISMISS  
FILED OCTOBER 28, 1969

[Filed Oct. 30, 1969]

1. The Plaintiffs filed a damages claim at C.M.J.A.F.B. due to the Air Force's plane activity that damaged their home on November 14, 1968.

2. On December 19th, an Air Force team came from C.M.J.A.F.B., including an engineer.

3. That engineer, in my opinion, is not capable of sending a false report to Washington to be turned down on.

4. The engineer is nothing but an apprentice. The engineer is in training, which shows in his own report that went to Washington to be judged on.

5. Nearly everything in his report, statement, or opinion contradicts itself in the report.

6. The report section (18) in the report says no glass damage was noted. That is wrong and denied by the Plaintiffs. I will refer back to this paragraph later in this section. The engineer saw where they had been replaced.

7. The engineer's report in section (20) Interior and Exterior Painting before November 14th with the exception of one bedroom. That is false. I told him the kitchen and two bedrooms, one bathroom and one entrance to the other bedroom had been painted since November 14, 1968. This paragraph is false and denied, except what I told him the report was wrong. All the engineers could use their own opinion.

8. In section (21) which the Air Force was holding back on me, which the Court ordered to get, it said paint was in the cracks five places in the house. The reason I quit painting was I got scared and called an attorney and told him I was painting and had turned in a claim. He told me I had better stop painting and wait. The engineer said that the paint in those cracks was definitely there before November 14th. That is denied by the Plaintiffs.

9. I got a call from the Air Force in Washington. Col. McCormick told me he wanted to come down here to inspect the home. I told him to bring who he wanted to and he could come.

10. John Lang, Jr. and an engineer came. I questioned the engineer to start with. I asked him what caused the house to crack after he saw it. He said all he could say was his opinion that it was moisture on the outside. I asked him what caused the inside wall to crack up. He said he did not know. I asked him what caused the clock to come off that wall and fall to the floor. He said vibrations. Then I asked him what caused the windows to go out. He said it was pressure generated. They saw where they had been replaced. When they got ready to go, John Lang, Jr. told me and my wife they would pay for the window light that was broken.

11. Referring back to paragraph (6) John Lang, Jr. offered me glass breakage do in my opinion is a valid claim.

12. The Air Force also knows that sonic booms could extend a crack in unsound plaster, break a window that is already under pressure, or shake a vase off a shelf. The mechanics for handling and processing claims for such damage are carefully spelled out in Air Force Manual 112-1. The Air Force is responsible to the taxpayer to pay all valid claims and to deny those that are not valid. Nearly all the claims are promptly processed at the nearest Air Force Base.

13. I am including copies of former evidence which support my claim.

14. In paragraph (6) in the Complaint, I will explain it in Court.

/s/ Jim Nick Nelms

Affadavit [sic] 2  
Sworn Statement

John Lee Nelms  
Ayden, N.C.  
Ph. 764-3515

This is my sworn testimony to Honorable Court in case I am not there. Jim Nelms is my daddy. He has got a case in Federal Court against the Air Force. He got a call from Col. McCormick and made a date with daddy for the fifth of June. I was supposed to have been there, but I could not be there then. They came. Daddy had a telephone installed just for this. Daddy called me here. He told me the people from Washington were here and they wanted to talk to me and daddy was on the other phone. The man told me he was a lawyer from Washington. It was McCormick or John Lang, Jr. and that he wanted to talk to me. He asked me what I knew about it. I went on and told him about the glass breaking in the door and kitchen windows. I told him I was laying on the couch in the den. I saw a crack come in the wall over the television when the sonic boom came at 2:30. The house shook all over. The clock came off the wall and the glass fell over the table. We had just put a rug under the heater that covered the floor. The man that helped us will tell you the same thing. I told him that we got up and went over the house and the walls were cracked all over in every room of the house and outside. I told him plaster was all over the house and mama had to sweep it up. He asked me if any cracks were in the house before Nov. 14th, 1968 and I told him no.

I have lived in the house all my life until March, 1969. He asked was anything wrong with the floor. I told him yes it was down on the North Side and in the middle of the house. He told me that was enough for you to talk to me for. I said you are welcome, and he hung up. I could have told him more but I think he had enough. Daddy did not stop me or tell me what to say to him. I told him what I knew and saw.

/s/ John Lee Nelms (Seal)  
JOHN LEE NELMS

Sworn to and subscribed to before me this the 25th day of June, 1969

My Commission expires:  
3-1-71

Affadavit [sic] 2  
Sworn Statement

I Tony Ferrell helped Mr. Nelms put down a rug in his den on November 14, 1968. We had to lift up his heater to put it under the heater which was hard to do. When we finished I sat down in a chair for a few minutes and approx. 2:30 the jet planes came over sending off a sonic boom and I saw a crack come in the wall over the television. I saw the glass come out of the door and in the Kitchen window. We got up and went over the house and the walls were cracked in every room plastering was on the floors. I stay near Mr. Nelms and will testify that the house was not like this before I came to help him on November 14, 1968.

Nashville, N.C.  
Nash County

/s/ Tony Ferrell  
TONY FERRELL

Signed and sealed this the 10 day of July 1969.

/s/ Verla M. Vick  
Notary Public

My Commission expires:  
3-1-71

July 9, 1969

We, Lottie and Harvey Ferrell will testify that Jim Nelms' home was not damaged before Nov. 14, 1968. We live across the highway from him and our home was damaged and window lights broken out during the same time from the Sonic boom.

Mr. &amp; Mrs. HARVEY FERRELL

Affadavit [sic] Sworn to me

Signed and sealed this the 9 day of July 1969.

/s/ Verla M. Vick  
Notary PublicMy Commission expires:  
3-1-71

MR. & MRS. JAKE J. NELMS  
Route #1 Box 25 Nashville, N.C.

We will testify that Jim Nelms home was in good condition before Nov. 14, 1968 when that plane came over here.

Our House was damaged at the same time. I talked to one of the Men from Washington, D.C. When he was at Jim Nelms home.

The Plane came over nearly every day at that time.

JAKE NELMS  
MRS. JAKE NELMS

Affadavit [sic] Sworn To Me  
Nashville, N.C.  
Nash County

Signed and sealed this the 9 day of July 1969.

/s/ Verla M. Vick  
Notary Public

My Commission expires:  
3-1-71

Nov. 18, 1968

**TO WHOM IT MAY CONCERN**

I have been a neighbor and visitor in the home of Jim Nelms for several years and I have seen how bad the walls are cracked in his home and I know the walls were not cracked before Nov. 14, 1968.

ALBERT J. W. [illegible]

Nashville, N.C.  
Nash County

Signed and sealed this the 18 day of December 1968.

/s/ Verla M. Vick  
Notary Public

My Commission expires:  
3-1-69

NORTH CAROLINA  
NASH COUNTY

## AFFIDAVIT

I, E. C. Nelms, was sitting in my home when this sonic boom came over on November 14, 1968, and I thought my front window was coming slam out when it happened at approximately 2:30 P.M., and the house vibrated or shook, I do not know which. When I heard about Jim Nelms' home, who is my brother, the house was cracked up when I went there and I know it was okay before then, as I have been a frequent visitor in his home.

/s/ E. C. Nelms  
E. C. NELMS

Sworn to and subscribed  
before me this 30 day  
of September, 1969.

/s/ Verla M. Vicks  
Notary Public

My Commission expires:  
3-1-71

**NORTH CAROLINA  
NASH COUNTY****AFFIDAVIT**

I, M. W. Nelms, was at my pond on November 14, 1968, and I had let the water down to about 2 feet for the State to get dirt out of the edge of the pond. When that sonic boom came over approximately 2:30 P.M., I saw fish jump out of the pond. A day or two before that I was at the store about 100 yards from there when another sonic boom came over and items shook on the shelves and bottles rattled out of the floor, so I do know there is some shaking or vibration from the sonic boom; and, before November 14, 1968, I know Jim Nelms' home was in good condition and I know it is damaged now.

M. W. Nelms

Sworn to and subscribed  
before me this 30 day of  
September, 1969.

/s/ Verla M. Vick  
Notary Public

My Commission expires:  
3-1-71

## To WHOM IT MAY CONCERN :

I. O.R Burgess was the contractor of the mason of the house of Jim N. Nelms when it was built and I do say the blocks were laid right and the footing was poured according to specifications. As far as I know the soil was in good condition.

Signed /s/ O. R. Burgess

Sworn to and before me, this the 4th day of April 1969

/s/ Verla M. Vick  
Notary Public

My Commission expires :  
3-1-71

Company Commander  
Seymour Johnson AFB  
Goldsboro, N.C.

Dear Sir :

I talked to you April 3rd by telephone. You told me to write you a letter about our disagreement of the Engineers decision [sic].

A team from Seymour Johnson came to my house and examined it in December and in Washington they based their decision [sic] on the Engineers examination [sic] Sonic Boom damage to that we contribute to.

On the 14th of November a plane came over my house and caused my house to crack up. The ground jarred and my house shook. Two of us were in the house at the time. The planes came over almost every day. The jar of the sound barrier has caused my house to crack and settle down. Almost every room has cracked.

I know my house was built according to specifications in L947 [sic] and part in 1954 and if it were going to settle it would have done so before the 14th of November. The footing is cracked which was put down by a Contractor according to specifications [sic], and blocks were laid with wire between each layer.

We fully disagree with the decision [sic] or claim of the Engineer. We would like for you to come and see it and bring any one with you whom you desire to.

Please let me know when you will come so that I can be at home for the review of the claim.

Sincerely.

Owners :

/s/ Jim N. Nelms

/s/ Lettie Nelms

/s/ Lonnie Nelms

Subscribed and Sworn before me  
the 4th day of April 1969

/s/ Verla M. Vick  
Notary Public

My Commission expires 3-1-71

Route 1  
Nashville, N.C.  
April 18, 1969

John A. Long, Jr.  
The Administrative Assistant  
Department of the Air Force  
Washington, D. C. 20330

Dear Sir:

I received a copy of your letter dated April 10, 1969 [illegible] in regard to reconsideration of my claim of which I am most grateful. I am enclosing pictures of my house showing damages as a result of sonic boom occurring [sic] on 14 November 1968. The letter denying my claim stated that the house showed no glass damage. They did not ask me about glass damage. I had already replaced three windows where the glasses were spattered. I have not made [sic] a false claim and I have witnesses that can prove that I did have damage on that day and was caused by those planes. The planes came over several days in a row. The blocks in my home were water proof and we [illegible] had an usual [sic] dry year last year so there was not enough moisture [sic] to do any damage and beside the water does not stand around my home. My wife returned from work on 14 November and found plastering pieces scattered all over the house. The enclosed pictures do not show the actual [sic] damage that we have. I will be more than glad to show the damage in person to you or anyone interested at any time. I do appreciate your interest and would like a settlement as soon as possible.

Yours truly,

/s/ Jim N. Nelms  
JIM N. NELMS

CC:

Symore [sic] Johnson AFB'  
Senator B. Everett Jordan

Signed this 18 day of April 1969

/s/ Verla M. Vick—Notary Public

12/17/1968

I S.S. Booth visited Jim Nelms' home today Dec. 17, 1968. An [sic] the walles [sic] were cracked in every room an [sic] the floor had dropped [sic] in the center of the house I don't know what did this But with it cracking up like it is I would hate to live in it. Because I think it is danger of falling in

S. S. BOOTH

Affdavit [sic] Sworn to me  
Sworn & Subscribed before me this the  
17th day of December 1968

Verla M. Vick  
Notary Public

My Commission expires:  
3-1-71

JOSEPH R. ALLEN, *Secretary & Treasurer*

J. D. ALLEN, *President*  
Post Office Box 226  
Telephone 237-1156  
Wilson, North Carolina

LINSTONE INCORPORATED  
PRODUCTS OF CONCRETE  
STEEL AND ALUMINUM

We furnished the concrete and block for Jim Nelms' home and material sold him met the following specifications. Merchandise was sold in 1954.

GUARANTEE

The products represented by this invoice are guaranteed to meet the minimum load bearing strength of 780 lbs. per sq. in. of gross bearing area, as required by state law and also the requirements of the North Carolina Concrete Masonry Association.

Linstone, Inc. By: J. E. Allen, Secy.

2000 # Concrete used in Footing. P.S.I.

Route #1  
Nashville, N. C.  
December 24, 1968

Senator Jordan  
Washington, D. C.

Dear Senator Jordan:

I am enclosing some pictures taken of my home which show the cracks and the damage of my home made by the planes on November 14, 1968. I know that the pictures do not show the complete damage since pictures do not show up so plain. I have completed the necessary forms and returned them to Seymour Johnson AFB and they sent someone out to my home to check the damage but they didn't seem to know much about the damage. He kept asking which was north and which was south of the house. He seem so mixed up himself that I am not sure what they have done. I have not heard from anyone since they came and I need my home fixed. I checked with a legal adviser and he told me that I really had the damages and that we have witnesses that will testify that the plane was in this area on November 14th at 2:30 and that a sonic boom was sent, out. I have had 4 contractors check my home and they all agreed that the damage can not be fixed without rebuilding my home. I had a building inspector check the house and they told me that the house could collapse [sic]. Senator Jordan I need and want your help and any that you can and will give me I will deeply appreciate it.

Sincerely,  
Jim Nelms  
B-1,  
Nashville, N. C.

Here is a copy of a letter that I wrote to Washington five days after the Seymour Johnson Air Force Team and Engineer came here. This is how much confidence I had in that engineer. This letter was written before I heard anything from anybody.

UNITED STATES SENATE  
Committee on Public Works  
Washington, D.C. 20510

November 29, 1968

Mr. Jim Nelms  
Route 1  
Nashville, North Carolina

Dear Mr. Nelms:

Thank you for your November 25 letter and the attached copy of the one you sent to the claims office at Seymour Johnson Air Force Base regarding damage to your home which you attribute to an aircraft sonic boom.

As my administrative assistant, William Cochrane, assured you in your telephone conversation with him, I want to be of any assistance I properly can in seeing that your interests are safeguarded as I would those of any constituent.

As I am sure you know, sonic booms do occur from time to time as a result of high-speed jet aircraft operations although every effort is made to break the sound barrier only at altitudes at which the ground effect is minimal.

Where it is established that damage results from such disturbances there is, of course, a procedure for compensation.

I am therefore forwarding copies of your file to Air Force headquarters here with a request for prompt attention and any action which verified facts warrant.

As soon as I have information on the status of your claim I will be glad to let you know promptly.

Meanwhile, with all best regards,

Sincerely,

/s/ B. Everett Jordan  
B. EVERETT JORDAN, USS

BEJ:pjh

STATEMENT OF ACCOUNT

RUSSELL C. PROCTOR

GENERAL CONTRACTOR

License No. 3797

P. O. Box 516

Phone 459-7147

Nashville, N. C. 8-2 1968

To: Mr. Jim Nelms

.....  
.....  
.....

JOB NO. ....

BALANCE

\$13,500.00

Impossible to fix old house,  
must build from start.

/s/ Russell C. Proctor

TOTAL AMOUNT DUE

## STATEMENT

Castalia, N. C. 27816

Nov. 30 1968

M /s/ Jim Nelms

---

In Account With

**JACK CONE**  
GENERAL CONTRACTOR

---

Re Build House	\$12,000.00
53 ft v 36 ft Block House	
Block Walls Cracked On All Walls—	
Cheaper To Build New Than To Fix Walls	

/s/ Jack Cone

## PETITION

TO WHOM IT MAY CONCERN

Sonic Booms do damage and cause houses to crack and the ground to shake in this area.

[illegible]  
[illegible]  
/s/ Billy Mc [illegible]  
[illegible]  
/s/ John Langley  
[illegible]  
/s/ Jim Helms  
/s/ Lettie Nelms  
[illegible]  
/s/ James Knight  
/s/ Mrs Nelms  
/s/ Rachel E. Nelms  
/s/ Nalie Gardner  
/s/ Jake Nelms  
/s/ S. L. Booth  
/s/ D. H. Edwards  
/s/ R. Nelms  
/s/ John L. Nelms  
/s/ William T. Ferrell  
/s/ Barbara Ferrell  
/s/ W. Harvey Ferrell

[illegible]  
[illegible]  
/s/ Jim Nelms  
Nashville, N.C.  
#1

Subscribed and Sworn to and before  
me the 4th day of April 1969

/s/ Verla M. Vick  
NOTARY PUBLIC

My Commission expires 3-1-1971

6-18-1969

Red Oak Township  
Nash County, N. C.

We the undersigned have been asked to evaluate the home site of Mr. Jim N. Nelms, which is located on a portion of the old Ricks' estate in the Red Oak township [sic]. Our findings are: \$2250.00

/s/ [illegible]

/s/ R. L. Tisdale

/s/ S. L. Booth

Signed and sealed this date:

6-18-69

My Commission Expires 3-1-71

/s/ Verla M. Vick

Notary Public

Mr. Nelms ask me how did we come to this figure. Here is what I gave him: I was called on to-appraise. Jim Nelms homesite one of a committee of three (3). After looking over his property we desided [sic] the buildings were in such poor condition the only value he had was in his plot of ground, well, trees and etc.

S. L. Booth /s/ S. L. Booth

Signed and Sealed this the 18 day of June 1969

/s/ Verla M. Vick  
Notary Public

My commission expires:  
3-1-71

ORDER

[Filed Dec 5, 1969]

This Court having considered the Motion for Summary Judgment and accompanying affidavits filed by the defendants herein and having heard oral argument on the motion at New Bern, North Carolina, on November 24, 1969; and the Court having noticed that the plaintiff is not represented by counsel and that the issues presented in the Motion for Summary Judgment are of a rather technical nature: and the Court having asked Mr. Everette L. Wooten, Jr., Esq., of the Lenoir County Bar to assist the plaintiffs in preparing a further response to the defendants' Motion for Summary Judgment:

It is ORDERED, ADJUDGED and DECREED

THAT the plaintiffs, through their attorney Mr. Wooten, shall have until January 3, 1970, in which to file an additional response to the defendants' Motion for Summary Judgment, and

THAT the Clerk shall serve copies of this order upon Mr. J. C. Proctor, Asst. U.S. Attorney, P.O. Box 2597, Raleigh, N.C.; Mr. Everette L. Wooten, Jr., P.O. Box 574, Kinston, N.C. 28501 and upon Mr. Jim Nick Nelms, Route #1, Nashville, N.C.

Let this Order be entered forthwith.

/s/ John D. [illegible]

JOHN D. LARKINS, JR  
*United States District Judge*

Kinston, North Carolina  
December 4, 1969

The district court's order of March 9, 1970, granting the defendants' motion for summary judgment is printed at Pet. App. B.

**NOTICE OF APPEAL**

**[Filed Mar 16, 1970]**

The plaintiffs give notice of appeal from the District Court decision for summary judgment for the defendants.

Plaintiffs wish to proceed on said appeal in form of a pauper's which was granted to them when the case started.

/s/ Jim Nick Nelms  
JIM NICK NELMS

The opinion of the court of appeals of May 28, 1971 is printed at Pet. App. A.

SUPREME COURT OF THE UNITED STATES

No. 71-573

MELVIN LAIRD, *Secretary of Defense, et al.*,  
*Petitioners,*

v.

JIM NICK NELMS, *et al.*

ORDER ALLOWING CERTIORARI. Filed January 17, 1972.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted.

Mr. Justice Douglas took no part in the consideration or decision of this petition.